



CITY OF  
**PORTLAND, OREGON**

**OFFICIAL  
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF MARCH, 1994 AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

OFFICERS IN ATTENDANCE: Cay Kershner, Clerk of the Council; Kathryn Imperati, Senior Deputy City Attorney; and Chuck Bolliger, Sergeant at Arms.

**CONSENT AGENDA - NO DISCUSSION**

Agenda Nos. 414, 444 and 445 were pulled from Consent. On a Y-5 roll call, the balance of the Consent Agenda was adopted as follows:

- 412** Cash investment balances for February 10, 1994 through March 9, 1994 (Report; Treasurer)

**Disposition:** Placed on File.

- 413** Accept bid of Sheldon Fire & Rescue Equipment, Inc., for two type III fire rescue ambulances for \$153,220 (Purchasing Report - Bid 94)

**Disposition:** Accepted; prepare contract.

- 415** Accept bid of Larson, Inc., for Gilbert sanitary sewer for \$3,272,621 (Purchasing Report - Bid 111)

**Disposition:** Accepted; prepare contract.

- 416** Accept bid of Ron Tonkin Chevrolet Co. for annual supply of GM passenger, pickup, van (OEM) body parts for five percent above "General Motors passenger, pickup, van body parts dealers cost" (Purchasing Report - Bid 113-A)

**Disposition:** Accepted; prepare contract.

- 417** Accept bid of The Halton Co. for one excavator for \$67,400 (Purchasing Report - Bid 119)

**Disposition:** Accepted; prepare contract.

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- 418** Accept bid of White GMC Trucks of Portland for three 50,000 GVW cab and chassis with 10-12 yard dump body for \$230,255 (Purchasing Report - Bid 120)

**Disposition:** Accepted; prepare contract.

- 419** Accept bid of Portland Freightliner, Inc., for one 33,000 GVW fuel service truck for \$83,863 (Purchasing Report - Bid 126)

**Disposition:** Accepted; prepare contract.

- 420** Vacate a certain portion of SE 101st and SE 103rd Avenues south of SE Powell Boulevard, under certain conditions (Second Reading Agenda 392)

**Disposition:** Ordinance No. 167466. (Y-5)

**Mayor Vera Katz**

- \*421** Agreement with Children's Discovery Centers of America for the provision of discounted child care services to City of Portland Employees (Ordinance)

**Disposition:** Ordinance No. 167467. (Y-5)

- \*422** Authorize contract with Think Fitness for on-site exercise conditioning classes for City employees (Ordinance)

**Disposition:** Ordinance No. 167468. (Y-5)

- \*423** Accept donation of a police canine from Larry Biggerstaff, private citizen (Ordinance)

**Disposition:** Ordinance No. 167469. (Y-5)

- \*424** Pay claim of Nils Nystrom (Ordinance)

**Disposition:** Ordinance No. 167470. (Y-5)

- \*425** Contract with Pacific Interpreters for interpreter services for the Police Bureau (Ordinance)

**Disposition:** Ordinance No. 167471. (Y-5)

- \*426** Agreement with the Oregon Health Sciences University to provide access to the Portland Police Data System (Ordinance)

**Disposition:** Ordinance No. 167472. (Y-5)

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- \*427** Authorize the purchase of Criminal Pocket Guide and Vehicle Code Pocket Guide for the Police Bureau from Pocket Press, Inc., a company co-owned by a City employee (Ordinance)

**Disposition:** Ordinance No. 167473. (Y-5)

- \*428** Agreement with the Bureau of Alcohol, Tobacco and Firearms to reimburse overtime for Portland Achilles Task Force (Ordinance)

**Disposition:** Ordinance No. 167474. (Y-5)

**Commissioner Earl Blumenauer**

- 429** Appoint Joella Werlin to the Consolidated Cable Communications Commission (Report)

**Disposition:** Confirmed.

- \*430** Authorize Purchasing Agent to sign a Purchase Order as a contract with Duncan Industries for maintenance/repair service and parts supply for the estimated amount of \$40,000 annually, for five years, without advertising for bids (Ordinance)

**Disposition:** Ordinance No. 167475. (Y-5)

- \*431** Authorize the Purchasing Agent to sign Purchase Orders as contracts with multiple vendors for various goods and services for the Bureau of General Services for the relocation of the Portland Police Bureau's East Precinct for a total estimated amount of \$140,900 (Ordinance)

**Disposition:** Ordinance No. 167476. (Y-5)

- \*432** Call for bids to construct Maintenance Slurry Seal Project 1994 and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167477. (Y-5)

**Commissioner Charlie Hales**

- 433** Accept completion of contract with CPM Contractors for Phase III of Fire Bureau Training Center and authorize final payment (Report; Contract No. 28646)

**Disposition:** Accepted.

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- \*434** Authorize application to Oregon Department of Agriculture for a grant in the amount of \$18,150 to develop and implement a water protection education project (Ordinance)

**Disposition:** Ordinance No. 167478. (Y-5)

- \*435** Contract with Peck, Smiley, Ettlin for architectural services in the amount of \$50,000 (Ordinance)

**Disposition:** Ordinance No. 167479. (Y-5)

- \*436** Contract with John L. Jersey & Son, Inc., for Delta Park soccer field reconstruction for \$63,000 and authorize payment (Ordinance)

**Disposition:** Ordinance No. 167480. (Y-5)

**Commissioner Gretchen Kafoury**

- 437** Accept repairs to elevators at Yamhill and Jefferson parking garages as complete and authorize final payment to Montgomery Elevator Company for \$8,778 (Report; Contract No. 28493)

**Disposition:** Accepted.

- \*438** Contract with Salvation Army for \$20,583 to operate its domestic violence program and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167481. (Y-5)

- \*439** Contract with Home Gardening Project, Inc., for \$16,225 to construct 35 raised bed garden plots and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167482. (Y-5)

- \*440** Contract with Clackamas Women's Services for \$10,293 to operate its domestic violence program and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167483. (Y-5)

**Commissioner Mike Lindberg**

- 441** Accept completion of the Fiske Basin CSO sump Unit 1 and make final payment to Eudaly Brothers (Report; Contract No. 28742)

**Disposition:** Accepted.

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- 442** Accept completion of contract with Buckaroo Thermoseal, Inc., for Wastewater Treatment Branch roofing Phase D project and pay retainage (Report; Contract No. 28814)

**Disposition:** Accepted.

- 443** Amend City Code to provide additional enforcement options to the Mid-County Mandatory Sewer Connection requirement (Ordinance; amend Chapters 17.33 and 17.36)

**Disposition:** Passed to Second Reading March 30, 1994 at 9:30 a.m.

- \*446** Authorize a contract and provide for payment for the Chautauqua Basin CSO sump project (Ordinance)

**Disposition:** Ordinance No. 167484. (Y-5)

- \*447** Authorize the execution of a Private Road Crossing Agreement with the Union Pacific Railroad Company and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167485. (Y-5)

- \*448** Contract with Heritage Research Associates, Inc., for professional archaeological services for certain public improvements projects and provide for payment (Ordinance)

**Disposition:** Ordinance No. 178486. (Y-5)

- \*449** Authorize a contract with Oregon Electric Construction, Inc., to construct medium voltage power system upgrade for the Bureau of Environmental Services (Ordinance)

**Disposition:** Ordinance No. 167487. (Y-5)

- \*450** Authorize a contract with Christenson Electric, Inc., to construct medium voltage power system upgrade owner furnished and installed equipment for the Bureau of Environmental Services (Ordinance)

**Disposition:** Ordinance No. 167488. (Y-5)

- \*451** Authorize a contract for the SE 166th Avenue, between SE Haig Drive and SE Bush Street, minor extension sanitary sewer system and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167489. (Y-5)

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- \*452** Authorize grants for performances and/or public services that promote the arts and provide for payment (Ordinance)

**Disposition:** Ordinance No. 167490. (Y-5)

**City Auditor Barbara Clark**

- 453** Minority Business Enterprise and Women Business Enterprise participation in City contracts for Second Quarter, FY 93/94 (Report)

**Disposition:** Placed on File.

- 454** Appoint Southwest Neighborhood Information, Inc., representative Deborah Haring and Central Northeast Neighbors representative Montell A. Carey as citizen advisors to Police Internal Investigations Auditing Committee (Report)

**Disposition:** Confirmed.

**REGULAR AGENDA**

- 414** Accept bids of Lakeside Industries for \$1,460,000, K. F. Jacobsen & Co. Inc. for \$794,000, and Porter W. Yett Company for \$420,000 for the annual supply of asphalt concrete (Purchasing Report - Bid 100-A)

**Discussion:** Cay Kershner, Clerk of the Council, said this should be continued one week to clear up an inconsistency in the numbers given in the title.

**Disposition:** Continued to March 30, 1994 at 9:30 a.m.

- \*444** Amend City Code to modify and clarify the adjustment procedure used for billing errors on sewer user charges (Ordinance; amend Chapter 17.36)

**Discussion:** The Clerk noted a request to refer this back to Commissioner Lindberg.

**Disposition:** Referred to Commissioner of Public Utilities.

- \*445** Authorize a contract and provide for payment for the Willamette Basin CSO test sump project, Unit 7 (Ordinance)

**Discussion:** The Clerk noted a request to refer this back to Commissioner Lindberg.

**Disposition:** Referred to Commissioner of Public Utilities.

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- 411 TIME CERTAIN: 9:30 AM** - Establish business property management license fee for downtown business district to fund supplemental downtown security and cleaning, crime prevention, business development, and marketing and communications services (Ordinance introduced by the City Council)

**Discussion:** Solomon Menashe, Chair, Association for Portland Progress (APP), asked Council to approve continuation of the Clean and Safe Program. He said there is tangible evidence of the program's success, as shown by the results that have been achieved through the Portland Guides, security patrols, cleaning crews, and general business and marketing advocacy of downtown. He noted the program was first formed in 1988 as a mandatory assessment on property owners but, with the passage of Ballot Measure No. 5, the program became voluntary with a majority, but not all, participating. Today, supporters are presenting a refined set of services and asking for mandatory participation in order to maximize the delivery of services.

Tammy Hickel, Regional Vice President, Nordstrom's and member of the Clean and Safe Advisory Committee, said the results achieved by the Portland Guides, the patrol officers and the cleaning crews over the past five years have set a standard of excellence with which few cities can compete. She described some of the proposed services, including increased security staffing and cleaning, graffiti removal and aggressive marketing services. She said these services are similar to those provided in shopping malls where they are funded collectively by the businesses, arguing that downtown should not be viewed any differently.

Doug Goodman, Chair, Clean and Safe Advisory Committee, said they have worked for the past year to develop services that will continue the successful program of the past six years and respond to the results of a recently completed survey of downtown property and business owners. Based on the survey results, a return to mandatory participation is strongly recommended to ensure equity as there are many now who directly benefit but do not share in the cost. Equally important is not allowing a self-performance option, which would only be available to the largest buildings, creating an inequity for smaller businesses. He said the proposed funding formula is far more complex than in past years because it respects the legal limitation of Ballot Measure No. 5 and the intent of the voters. He explained the funding formula, which allows them to measure the need for services through indicators which reflect the estimated load a business creates to downtown.

Clayton Hering, Chair-Elect of APP, asked Council to accept the petitions and pass this ordinance which allows a downtown property management business license fee to fund the Clean and Safe services. He said the budget level being recommended restores the level of services to what it

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was with 100 percent participation. He said he strongly believes if the Central city core is protected the neighborhoods can protect themselves, arguing that the fortune of the entire region is tied to the health of downtown. He said this is a tremendous program, the kinks of which have been worked out over the years, and they will continue to refine it in response to the changing needs of downtown.

Other individuals speaking in support included:

Jon Bradford, general manger of PacWest Building  
Tom Sjostrom, Morgan Park, representing the Roberts family  
Dick Reiten, President, Portland General Corp.  
Todd Slenning, Alex Formal, and President of Downtown Retail Council  
Debbie Wood, President, Old Town/Chinatown NA and Central City

Concern

Phil Kalberer, President, Kalberer Food Service  
Vern Rifer, President, Downtown Community Association  
Serge D'Rovencourt, General Manager, Hilton Hotel  
Jon Carder, Melvin Mark Properties  
Bill Naito, downtown property owner and past president, APP

Supporters stressed the need for the mandatory fees in order to continue the Clean and Safe program and provide equity. They noted that the proposal comes from the community, not the government, based on its belief in the need to maintain Portland's reputation as a City that is a clean, safe and vital place. Speakers also stated that to increase the residential base downtown, both actual personal safety and the perception of such safety must be present, adding that they do not believe the Oregon Department of Transportation and others would have decided to locate here without the presence of the economic improvement district.

Dale Sherbourne, City employee, 2134 SW Palatine, 97219, said APP employees work under unsatisfactory conditions and are told not to talk to anyone about their wages, working conditions or about organizing. He said this program makes these people de facto public employees but at less wages and less benefits. He said this is just another level of bureaucracy which creates a two-tiered work force that is not good for working people. He asked if the City was willing to take on liability for these employees, noting a recent shooting by one of the guards. He said this creates another government downtown and if the proponents cannot sell this program to their fellow businessmen then it should fail of its own accord. He charged there is no accountability as to how the money is spent, arguing that to really make this program work, these people should tax themselves and contribute to the City coffers so that City employees can do the work, as they do now.



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Paul Richmond, PO Box 454, 97207, said an inordinate number of the complaints he hears about police misconduct can be traced to the guards employed by APP. He objected to the use of private or public dollars to create an enhanced security zone and also criticized the fact that the guards' uniforms are almost identical to those of the Police. He said he has also been told by some businesses that the guards harass their clients and that certain businesses seem to be using them to try to get rid of other businesses.

Jim Atwood, 33 SW 3rd, 97204, urged Council to vote against this for four reasons: 1) it should be voluntary, not mandatory; 2) as a tax it is subject to legal challenges; 3) it will create unnecessary bureaucratic expense for the City; and 4) the assessment formula is ambiguous and probably unfair. As a downtown property owner and manager, he voluntarily contributes to the EID as he supports the concept of a clean and safe downtown. However, a tax is a tax and should not be labeled a user's fee. He noted that they already pay taxes for police and street cleaning and it is perfectly okay for business and property owners to band together and contribute voluntarily to hire security guards and more street cleaning. He said he believes that if the new "Measure 5" on the ballot passes this November, such user fees will have to be voted upon by the people. Portland will be laughed at if it imposes a user's fee for services customarily covered by property taxes. Mr. Atwood called for making a City bureau responsible for guaranteeing that assessments are made under the formula. The formula itself is convoluted because it tries to beat the Measure 5 cap and the ad valorem charge is the only one that makes sense.

Bill Sizemore, Executive Director, Oregon Taxpayers United, said the business community is asking the City to use its power to force people to pay fees they do not wish to pay. This power is constrained by the Constitution and Measure 5 which states that property cannot be taxed above certain limitations. He said Council needs to decide for itself whether this simply renames a property tax as a fee rather than referring it to the Courts. He also questioned calling it a user fee when downtown residents are not charged even though they will benefit as much as the businesses. He said the program should be continued, either with voluntary contributions or with City tax dollars because it is so vital to the downtown area. He said those who supported Measure 5 cannot allow those protections to be eroded by simply renaming taxes as users fees.

Mike Garvey, Commander, Central Precinct, said Clean and Safe is an indispensable program, adding that factors such as graffiti removal and clean streets have a major impact on whether crime moves into an area. He said the City cannot do all these things without the assistance of citizens and this partnership has been very successful.

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Chris Thomas, Attorney for APP, said the formula was developed within the constraints of Ballot Measure 5 as interpreted by the courts. Another constraint was to develop a formula that would not result in the payees having to fill out a lengthy tax form. For that reason they looked at measures of load that users of business property would create on the district and which were contained in some publicly available data base. They selected three measures with existing data bases -- assessed value, square footage and passenger elevator capacity -- which reflect the number of people that a business is attracting to downtown. While they believe this formula meets the constraints of Measure 5, they recognize that is open to question and thus the ordinance directs the City to initiate a test case to determine that. Regarding the exclusion of residential properties, he said when the economic improvement district was originally established by the legislature a policy was established which excludes residential property from participation, reflecting a desire to attract more residents downtown and the fact that the loads residents impose are much different from those of business and commerce.

Commissioner Hales asked if the area included in the EID was unchanged.

Mr. Thomas said the area is slightly larger at the south end of town to include some properties that have been participating through voluntary contracts with APP and which wanted to become part of the district.

Commissioner Hales asked what means exist to modify the boundary in the future.

Mr. Thomas said Council could amend the ordinance to expand the boundaries. APP would probably introduce such a request after making sure those to be included wanted to participate.

Commissioner Hales asked how the projected revenue compared to the EID structure of the past.

Terry Miller, APP Chief Financial Officer, said from 1988-91 the district raised \$1.6 million a year as a mandatory levy. From 1991-94, voluntary participation raised about \$1.5 million. This proposal would raise \$2.35 million.

Mayor Katz asked what percent of the 20 percent of properties not currently participating are either from out of town or represent trusts.

Ruth Scott, APP Executive Director, said 70-80 percent of those not participating are out-of-town owners and trusts.

**Disposition:** Passed to Second Reading March 30, 1994 at 2:00 p.m.

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**Commissioner Earl Blumenauer**

**S-\*455 Agreement with Oregon Department of Transportation for Columbia Corridor Transportation Study (Ordinance)**

**Discussion:** Commissioner Blumenauer moved acceptance of a Substitute which adds an emergency clause. Commissioner Lindberg seconded and, hearing no objections, the Mayor so ordered.

Laurel Wentworth, Office of Transportation, said this is an opportunity to take a comprehensive look at intermodal and goods movement throughout the Corridor. It allows them to combine some of the tenets of the Albina Community Plan with the new Surface Transportation Act and move toward removing trucks from Marine Drive onto a more suitable route. It should also have a positive land use impact in the inner northeast neighborhoods.

**Disposition:** Substitute Ordinance No. 167491. (Y-5)

**Commissioner Charlie Hales**

**456 Deny consent to proposed way of necessity for Jerry Finley and Phillip Meyers and adopt report evaluating the proposed land trade under City policies and under Land and Water Conservation Fund prerequisites (Report)**

**Discussion:** Jim Sjulín, Parks Bureau, reviewed the history of the parcel and dealings with the current owners, Jerry Finley and Philip Meyers, as well as the status of the legal proceedings. He also explained the 6-F process mandated by the National Parks Service which must be observed when land trades are contemplated.

He said he became aware of this 4.49 acre parcel, which is totally surrounded by Forest Park, in 1987 when it was being considered for acquisition by the Friends of Forest Park. Purchase of another parcel took priority, however. He said at that time it was noted that the asking price for the property was \$49,950 with recognition that a \$250,000 road would have been required to provide access to this property. Because of the known development problem, the assessed value was \$4,700. He related attempts to negotiate acquisition of this parcel and to allow access, noting that an appraisal was required, which the Bureau was not willing to pay for. Regarding access, he said the property is serviced on the plat by three different right-of-ways, all of which were considered and eliminated as unfeasible. During this same time the Planning Bureau was working to execute the Northwest Hills Protection Plan which addresses environmental zoning in the Forest Park area. He said the current owners cut down about half an acre of trees during a period when there was a

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temporary prohibition on the disturbance of forests. Mr. Sjulín added that in May, 1991, Council authorized Parks to negotiate purchase of this property on a willing seller basis.

Harry Auerbach, Deputy City Attorney, said the difficulty in determining appropriate City action was the lack of complete information. He said the City needed to know where the property owners intended to put the access, what they intended to give in return for access across City-owned property and the impact of that transaction on the Park. He said he suggested to the owners that they use the way of necessity procedure, which is a way of obtaining access across another's property, either private or public. Using that process would produce the necessary information to allow staff to make a reasoned recommendation to Council. The property owners filed a petition for a way of necessity with Multnomah County which was referred to the County Surveyor for a report.

Mr. Auerbach said when he received the petition and report, it became clear that staff still did not have the necessary information to advise Council as to whether it should consent to this or not. There was still no precise legal description of the contours of the property and while the owners had indicated a willingness to trade, no specific property was suggested for exchange. In response to these concerns a stay was requested and in May, 1993 the City received an appraisal and a detailed proposal which was reviewed by all the affected City bureaus, including the Fire Bureau, Buildings, Planning and Transportation. Based on this information, Mr. Sjulín recommended that Council deny consent to the way of necessity. In the meantime, petitioners asked that the stay be lifted and Multnomah County passed an ordinance disclaiming jurisdiction, advising the petitioners to file in Circuit Court, where the matter is now pending. Council needs to address whether it wants to give a way of necessity across Forest Park to Germantown Road to serve this property. Factors to consider are the financial and recreational value of the property, the impact of a road on Forest Park and the purpose served by giving a way of necessity to build a road on property that probably cannot be developed, given the zoning. Another problem is that a partition would be needed in order to separate the two lots proposed for exchange and there is some question as to whether the property would qualify, making the exchange impossible. Mr. Auerbach said the process is very complicated and everyone is very frustrated. He said petitioners have the burden of demonstrating that they meet the requirements for a way of necessity but staff believes they have not yet met that burden.

Mr. Sjulín summarized some of the Bureau's concerns, including the need to be consistent with the Northwest Hills Natural Areas Protection Plan which applied an Environmental zone to this property and to consider wildlife impacts and fragmentation of the interior forest habitat. He said the trade seems pointless in view of severe development problems and its

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disadvantageous impact on Forest Park. The proposed trade would also take advantage of a unique location in the Park which was created by over 50 years of public investment. Finally, the proposal does not consider a no-build alternative which would provide compensation through transfer of development rights.

Richard Weil, attorney representing the petitioners, said his clients can show that they have been responsive to every request made by the City in order to develop this property. He said this case boils down to an island of property which was never acquired when Forest Park was developed; staff knew full well that a developable parcel was left in the middle of the Park. If the City denies his clients the right to develop this property that constitutes a taking and a condemnation process is in order. Since the City has not done that the only alternative was to pursue development. Regarding the transfer of development rights (TDRs), he said there is no evidence they have any market value. Mr. Weil described his clients' numerous attempts to proceed with the way of necessity which, he charged, went nowhere until two weeks ago when the Court order the City to come up with a decision. Miraculously, a report was then produced and now his clients will be able to get the decision they need.

Jerry Finley, 115 NE Stafford, property owner, said she knew it would be a challenge to get access to this property but it should not be this difficult. She said she went to considerable expense to prove that Mt. View Blvd. was not a viable access and now, three and a half years later, she is being told that use of an existing tract on the other side of the ravine is not a good idea after all. She said she is confused and not sure what she is supposed to do.

Phillip Meyers, property owner, said his wife wanted to mitigate any damage to Forest Park and City officials expressed an interest in doing the same. He said it seems reasonable not to plow up an area when there is already an existing tract, arguing that they did basically what the City asked. He asserted that City staff made misstatements about a land trade as they were never offered a property trade and never wanted one anyway. He said prior to buying the property he checked the zoning and found they could still build two pieces at a minimum. They bought the property knowing there were three dedicated accesses that could not be vacated. He said all they want to do is get access to their property and build their home, asserting that Mr. Auerbach has deliberately delayed this so the permits would expire and the Environmental Protection zone would apply.

Bonnie Fry, realtor, said she is very angry as she dealt with this issue from 1980 to 1990 and the current owners have been dealing with it for three-and-one-half years now. She said the City has no intention of letting anyone build on this property and will give them a runaround that costs everyone a lot of money. She reviewed her dealings with City staff, noting

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that two previous offers fell through and she had advised the current owners not to buy the property as it would be nothing but trouble.

Mark Skelte, property appraiser, said the appraisal was not to establish a value of exchange but to establish what a fair trade for access would be, land area for land area. He used as his unit of comparison buildable home sites which also gave the property owners an idea of what the land value might be. The appraisal also stated there was no consideration of providing access for utilities, water and sewer. Those costs would have to be deducted from any valuation to determine what the property is worth today, provided it is zoned properly and can obtain the necessary building permit. He said the whole purpose of his analysis was to state how many square feet the property owners needed to give up to get access from a municipal street. He said it is not a determination of property value.

Mr. Weil said the purpose of the appraisal was to meet the statutory requirement of proving that the owners are giving up equal value to get equal value. He said they need some City property to get access. He said the issue of a partition is a red herring as the state statute specifically allows lot line adjustments to be created in order to trade property for access. He said any land trade requires approval by both the State and federal government because federal money was used to acquire Forest Park. He said the State, acting for the federal government, approved the application very quickly, finding that the conversion was fair. He said his client's property shows four platted public roads providing for access. If built today those roads would be an environmental disaster but legally his clients have the right to do so.

Commissioner Blumenauer, noting that many of the lines shown on the maps date back to the previous century, asked if a property owner has the right to construct any road shown on a plat.

Mr. Weil said yes, if alternative access is not available. He said the way of necessity process will determine whether that access is available but legally a person who owns land cannot be prohibited from access.

Mr. Weil concluded by noting that an Environmental Protection zone was applied to this property after a building permit had been applied for and denied based solely on lack of access. If access were now granted but the building permit denied because of the Environmental zone, that is a taking. He said if his clients cannot build on the property there is no sense in granting them access, arguing that it seems useless to keep going through the other little steps the City has directed until the access issue is determined.

Commissioner Lindberg asked if their desire was to build a single home on the site.

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Mr. Meyer said yes, their intention was to build a home and then sell off the second parcel, treating that as an investment.

Commissioner Lindberg asked if they had any interest in a trade.

Ms. Finley said when Mr. Sjulín mentioned a trade, they were told there was not enough staff to look for suitable property suitable. She said she told him that if staff did find something to bring it to them but has never had an offer. She said they offered to keep the one-acre building site and to give the City the other three sites but this was not accepted.

Arnold Rochlin, PO Box 83645, 97283, said petitioners have thrown accusations recklessly at Mr. Sjulín and Mr. Auerbach. He said the petitioners have received delay after delay because they refuse to take no as an answer. Staff explained to them the legal options but made it clear that they were not likely to approve any new proposal. The property owners have admitted they knew the situation when they bought the property, including the fact that two previous prospective buyers had walked away because they knew the City was not inclined to grant the alternate route that was requested. He said the appraiser left out of his report the fact that the \$250,000 cost of building a road across the platted access should be deducted, which brings the property down to a negative value and probably explains why the assessed value is in the \$4,000 range. These people knowingly bought a lot with a serious problem and the City has no obligation to see that they receive benefit from this speculation, particularly when doing so would be at the expense of the rest of the City. This is not merely an equal land for equal land trade, as the road the owners propose would divide one part of the Park from the other with a private area. He also said the property owners had an opportunity to appeal the environmental zone designation but did not do so. Mr. Rochlin said there is no win-win solution in this case -- Council just has to say no.

Chris Wrench, 3103 NW Wilson, 97210, President, Friends of Forest Park, said building a new road and a house would negatively impact wildlife habitat in Forest Park.

Molly O'Reilly, 1414 NW 53rd Drive, 97210, said having a private road in the middle of the park will be very intrusive recreationally. She argued that there is no higher value for the area than to become a private park, adding that thousands of citizens have invested money and time to create this unprecedented resource.

Commissioner Hales said it is his intention to have the Planning Bureau untangle and resolve the land conflicts in Forest Park. He said there are sound policy and legal reasons for the City's denial of a way of necessity.

Commissioner Blumenauer said he believes the City is not obligated to



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allow construction of roads shown on plats. He said the City would be derelict in approving any of these options and he does not think anyone has been misled as that has been the City's consistent position even though at times a confusing signal was sent. This property probably does have a negative value and it seems as if everyone knew what they were getting into at the outset. Most important, the City has no alternative in terms of stewardship of the Park.

Commissioner Kafoury said when the Northwest Hills Plan was adopted in 1991 there was no intent to allow building in this area and the Park needs to be protected for the future.

**Disposition:** Adopted. (Y-5)

**\*457** Designate eight Heritage Trees in the City of Portland (Ordinance)

**Discussion:** Jane Glazer, Chair, showed slides of the eight trees being requested for designation as Heritage Trees.

Mr. Auerbach said the private property owners have all signed consent forms which are included with the ordinance.

**Disposition:** Ordinance No. 167492. (Y-5)

**City Auditor Barbara Clark**

**458** Assess property for large lot deferral contracts through February, 1994 (Hearing; Ordinance; L0043)

**Disposition:** Passed to Second Reading March 30, 1994 at 9:30 a.m.

**459** Assess property for sewer system development charges through February, 1994 (Hearing; Ordinance; Z0561 through Z0569)

**Disposition:** Passed to Second Reading March 30, 1994 at 9:30 a.m.

**460** Assess property for sidewalk maintenance for period of July through September, 1993 (Second Reading Agenda 406; Y0510)

**Disposition:** Ordinance No. 167493. (Y-5)

At 12:25 p.m., Council recessed.



**MARCH 23, 1994**

**A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF MARCH, 1994 AT 2:00 P.M.**

**THOSE PRESENT WERE:** Mayor Katz, Presiding; Commissioners Blumenauer, Hales, Kafoury and Lindberg, 5.

**OFFICERS IN ATTENDANCE:** Cay Kershner, Clerk of the Council; Ruth Spetter, Senior Deputy City Attorney; and Chuck Bolliger, Sergeant at Arms.

**Commissioner Gretchen Kafoury**

- 461** Liquor license application for Bengal Enterprises, Inc., dba Li'l Mart, 8826 SE Stark St., package store liquor license (new outlet); Favorable recommendation (Report)

**Discussion:** John Werneken, License Bureau, said their recommendation is favorable although they are aware of substantial public concern about criminal activity in this vicinity. However, the record indicates no unusual degree of activity at or around this location. He said the new owners have substantial experience as employees in the convenience store industry and have no record of liquor law violations. He noted the 11 a.m. closing hours, much earlier than is customary in the industry.

**Disposition:** Favorably recommended. (Y-5)

- 462** Liquor license application for Oliver Enterprises, Inc., dba Alberta 29, 2904 NE Alberta St., retail malt beverage liquor license (renewal); Unfavorable recommendation (Report)

**Discussion:** Mike Sanderson, License Bureau, explained that this tavern license has a record of violent and disruptive incidents. Based on Police and OLCC investigations, a basis for cancellation exists under State Senate Bill 126.

Officer Perry Christenson, Police Bureau Drug and Vice Division, said the unfavorable recommendation is based primarily on public safety and livability issues, noting that before the licensees voluntarily closed in January, 1994, Police had documented over 20 reports of assault, robbery, theft, drugs and vandalism either on or outside the premises. He also described two shootings that occurred there. In addition, there are complaints from neighborhood groups and individuals about disruptive behavior late into the night. The Police Bureau and OLCC monitored the premises and substantiated the complaints, concluding that they were understated. Both the License and Police Bureaus believe there is no alternative other than to recommend a denial.

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Helen Ellison, 2727 NE Wygant, representing two block watches, said there have been constant problems with this tavern which overflow into the neighborhood day and night.

**Disposition:** Unfavorably recommended. (Y-5)

- 463** Liquor license application for Elias and Cleopatra Karamanos, dba Elias Grocery, 1806 NW Couch St., package store liquor license (renewal); Unfavorable recommendation (Previous Agenda 408)

**Discussion:** Mike Sanderson, License Bureau, said during last week's hearing on this renewal evidence was placed in the record which provides a basis for an unfavorable recommendation under Senate Bill 126. The record now more clearly demonstrates that a serious and persistent problem exists near this location as a result of the unlawful activities of this store's patrons. He explained that under Senate Bill 126, an applicant in these circumstances may mitigate a license cancellation proposal by showing that the problems are not serious and persistent or by showing that he is willing and able to take the steps necessary to control the problems. The hearing record clearly shows that this applicant is unwilling to take those steps. Alternatively, the applicant has not put forth any arguments that the problems are not serious and persistent. Based on those facts, staff recommends an unfavorable endorsement to the OLCC.

Mayor Katz noted the change in the original recommendation.

Commissioner Kafoury moved to substitute an unfavorable recommendation based on Council's direction to the License Bureau last week. Commissioner Blumenauer seconded.

**Disposition:** Unfavorably recommended. (Y-5)

At 2:12 p.m., Council adjourned.

BARBARA CLARK  
Auditor of the City of Portland

*Cay Kershner*

By Cay Kershner  
Clerk of the Council